

insurance premiums. I decided that I was going to approach my employees and say: I would much rather pay you extra to work in my business and leave it up to you to line up your own health care coverage.

Again, they were part-time employees who we expected, in many cases, to work for us for 3 months, sometimes 2, 3 years, and then they would be moving on.

By taking this approach, I also gave them portability. In other words, when they left my business, they were not faced with the issue of what is going to happen with my insurance when I get to a new employer; what is going to happen, from the employee's perspective; what am I going to do when I am no longer working for my current employer as far as health coverage is concerned.

That is how I decided to handle it. I think most small employers will view it the same way I did. When they see that untenable exposure, they are going to decide not to have coverage for their employees. In order to stay competitive, they might decide to pay them more or some other way to compensate them for that loss in health care coverage.

The fact remains, from my own personal experience, it is not hard for me to believe that many small employers, as many as half, will elect not to provide health care coverage for their employees.

We need to do everything we can to encourage the small business sector to survive. This is not the only place where we draw a bright line, where we recognize how important the small business sector is to us. In other places in the law, we have tried to define what a small business is. In some cases, we drew it at 150 employees or less; in some cases, 100 employees or less; or maybe, in some cases, 50 employees or less. In fact, in some cases, they even tried to define the very small employer of 15 employees or less.

It is not an unusual policy for the Senate in legislation to draw a bright line to define what a small employer would be. In this particular instance, it is entirely appropriate to make that at 50 employees or less, and if you have 50 employees or less, you would be exempted from the provisions of the Senate bill that is before us.

Small businesses are important for the economic growth of this country. Small businesses are important to generate new ideas. When an American has a great idea, many times they go into business for themselves, and they try to market that idea. If it works, it may eventually grow into a large business. If it does not work, they may eventually end up having to work for another employer. But many times they are contributors to their communities. They are contributors to the employee base. They are contributors to the leadership within that community and help make that community a better place in which to live.

I believe we need to be sensitive to what small employers can contribute to our economy and the vital role they play. I believe this mandate, this bill will make it much more difficult to stay in business, and, consequently we will begin to lose that pool of talent that is so vital to the health of this country.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, under the order that is now before the Senate, if the Senator from Colorado yields back his time, we will do so and finish this debate in the morning under the time that is scheduled.

Mr. ALLARD. Is the Senator from Nevada yielding back his time?

Mr. REID. Yes.

Mr. ALLARD. I will yield back the remainder of my time.

Mr. REID. We will complete the debate in the morning. The Senator from Colorado will have an hour in the morning.

Mr. ALLARD. That is my understanding, there will be an hour.

Mr. REID. Evenly divided.

I yield back our time and the minority has yielded back their time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent there be a period of morning business, and Senators be permitted to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PRESIDENTIAL TRADE NEGOTIATING AUTHORITY

Mr. BYRD. Mr. President, I am very much concerned about our loss of direction with regard to Presidential trade negotiating authority. Many Members of the House, and some of my colleagues here in the Senate, advocate a wholesale surrender—a wholesale surrender—of Congress' constitutional authority over foreign commerce, as well as the evisceration of the normal rules of procedure for the consideration of Presidentially negotiated trade agreements.

I am talking about what is commonly known as "fast-track,"—fast track—though the administration has chosen the less informative moniker—the highfalutin, high sounding "trade promotion authority." "Trade promotion authority" sounds good, doesn't it? "Trade promotion authority," that is the euphemistic title, I would say—"trade promotion authority." The real title is "fast-track."

What is this fast-track? It means that Congress agrees to consider legislation to implement nontariff trade agreements under a procedure with mandatory deadlines, no amendments, and limited debate. No amendments. Get that. The President claims to need this deviation from the traditional prerogatives of Congress so that other countries will come to the table for future trade negotiations.

Before I discuss this very questionable justification—which ignores almost the entire history of U.S. trade negotiating authority—I think we ought to pause and consider—what?—the Constitution of the United States. I hold it in my hand, the Constitution of the United States. That is my contract with America, the Constitution of the United States.

Each of us swears allegiance; we put our hand on that Bible up there. I did, and swore to support and defend the Constitution of the United States against all enemies, foreign and domestic.

Each of us swears allegiance to this magnificent document. As Justice Davis stated in 1866:

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

*Ex Parte Milligan*, 71 U.S. 2 (1866). This was the case that refused to uphold the wide-ranging use of martial law during the Civil War.

Thus, Mr. President, let us review the Constitution to see what role Congress is given with respect to commerce with foreign nations. Article 1, section 8, says that "The Congress shall have power to . . . regulate commerce with foreign nations, and among the several states, and with the Indian tribes . . ."

This Constitution also gives Congress the power "to lay and collect . . . Duties, Imposts, and Excises." The President is not given these powers. Congress is given these powers. There it is. Read it. The President is not given these powers. These powers have been given to Congress on an exclusive basis.

Nor is this the extent of Congress's involvement in matters of foreign trade. It scarcely needs to be pointed out that Congress's central function, as laid out in the first sentence of the first article of the Constitution, is to make the laws of the land. Were it not for that first sentence in this Constitution, I would not be here; the Presiding Officer would not be here; the Senator from the great State of Minnesota, Ohio, Florida, the great States, Alabama, we would not be here. Congress makes the laws of the land. Some people in this town need to be reminded of that.